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BEFORE THE FEDERAL ELECTION COMMISSION

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DISMISSAL AND CASE CLOSURE
UNDER THE ENFORCEMENT
PRIORITY SYSTEM

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2011 MAY 16 P 3 44

FEDERAL ELECTION
COMMISSION
SECRETARIAT

In the Matter of

MUR 6384
San Mateo County Republican Party
(Fed. Acct.) and Leiv Lea, as treasurer
Michael Schwab

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria to allocate its resources and decide which cases to pursue. These criteria include, but are not limited to, an assessment of (1) the gravity of the alleged violation, both with respect to the type of activity and the amount in violation, (2) the apparent impact the alleged violation may have had on the electoral process, (3) the legal complexity of issues raised in the case, (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended ("Act"), and (5) development of the law with respect to certain subject matters. It is the Commission's policy that pursuing low-rated matters, compared to other higher-rated matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss certain cases or, where there are no facts to support the allegations, to make no reason to believe findings.

In this matter, the complainant, Ms. Angini Kumar, states that she was elected treasurer of the San Mateo County Republican Party (Fed. Acct.) ("Committee")¹ on June 9, 2010. Subsequently, according to Ms. Kumar, the Committee's chairman, Michael Schwab, prevented her from entering the Committee's headquarters in order to "retrieve any checks, donations, or receipts." She also asserts that Mr. Schwab "refused to give [her] any financial accounting of the Lincoln Day Dinner that was held in April" and states that, as a result, she lacks access to the

¹ According to its Statement of Organization, the Committee is a subordinate committee of the California Republican Party. The Committee files financial disclosure reports on a monthly basis.

1 Committee's "financial accounting" and has been unable "to send a complete financial report" to
2 the Federal Election Commission, apparently in violation of 2 U.S.C. § 434(b). Finally,
3 Ms. Kumar states that Mr. Schwab interfered with the duties of former treasurer Elsie Gufler and
4 her assistant Kelly Lawler, although the alleged acts of interference are not specified. Appended
5 to the complaint is a summary of various acts allegedly committed by Mr. Schwab, a copy of the
6 Committee's bylaws, and email and written correspondence between Ms. Kumar and other
7 Committee staff.

8 In response, Committee treasurer Leiv Lea states that he was elected to his post
9 subsequent to the events alleged in the complaint and has no knowledge of the issues addressed
10 therein. Michael Schwab also filed a response in which he states that the complaint "arose from
11 an internal political party dispute involving the committee leadership and the committee's two
12 former treasurers," Ms. Gufler and Ms. Kumar. Addressing the "critical question" of whether
13 the Committee's financial disclosure reports "accurately reflect [its] federal campaign activity,
14 its receipts and expenditures," Mr. Schwab answers in the affirmative. He explains that, as a
15 result of the controversy, the Committee's May 2010 Report, which was signed by Ms. Gufler,
16 "did not reflect full and complete information," but states that the Committee subsequently filed
17 an amended May 2010 report on September 15, 2010, signed by Mr. Lea, that was accurate and
18 complete.² Mr. Schwab also asserts that none of the activity reflected in either the original or the
19 amended May 2010 reports affected federal elections, nor did the Committee engage in any
20 "direct federal candidate support" during that time period.

21 Appended to Mr. Schwab's response is a sworn declaration from Mr. Schwab reiterating
22 the facts recited in his response and pledging to avoid reporting errors in the future. Also

² A comparison of the original and amended May reports indicates that the Committee decreased "itemized contributions" to \$3,850 from \$4,250 (Detailed Summary Page, line 11(a)(i)), a decrease of \$400.

1 attached is a sworn declaration from Ms. Lawler, who describes herself as a "paid professional
2 campaign reports preparer," and explains that she briefly resigned her position with the
3 Committee in - late August or early - September because she did not want to become involved in
4 the Committee's internal dispute. Ms. Lawler states, however, that once Mr. Lea was elected
5 treasurer, she worked with him to ensure that all of the Committee's financial disclosure reports
6 were accurate, which led to the Committee's submitting an amended May 2010 report.

7 The Act requires that political committees file accurate financial disclosure reports,
8 disclosing cash on hand, receipts, disbursements, and other information. See 2 U.S.C. § 434(b).
9 It appears that internal dissention affected the accuracy of the Committee's original May 2010
10 financial disclosure report, which apparently caused an over reporting of itemized contributions
11 by \$400, *see n. 2*. Given the Committee's swift remedial action, its pledge to avoid similar
12 reporting errors in the future, and the limited scope of the violation, we believe that further
13 enforcement action is unnecessary. Accordingly, under EPS, the Office of General Counsel has
14 scored MUR 6384 as a low-rated matter and therefore, in furtherance of the Commission's
15 priorities as discussed above, the Office of General Counsel believes that the Commission should
16 exercise its prosecutorial discretion and dismiss this matter as to the San Mateo County
17 Republican Party (Fed. Acct.) and Leiv Lea, in his official capacity as treasurer. See *Heckler v.*
18 *Chaney*, 470 U.S. 821 (1985). Based on the information provided in the complaint and the
19 responses, this Office also recommends that the Commission find no reason to believe that
20 Michael Schwab violated 2 U.S.C. § 434(b).³ Finally, this Office recommends that the
21 Commission close the file and send the appropriate letters.

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³ In light of Mr. Schwab's position as Chairman of the San Mateo County Republican Party, he appears to have no liability pursuant to the facts presented in this matter under 2 U.S.C. § 434(b).

RECOMMENDATIONS

1. Dismiss the allegation that the San Mateo County Republican Party (Fed. Acct.) and Leiv Lea, in his official capacity as treasurer, violated 2 U.S.C. § 434(b).
2. Find no reason to believe that Michael Schwab violated 2 U.S.C. § 434(b).
3. Close the file and send the appropriate letters.

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5/11/11
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